

**PUBLIC**

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**UA 142/08**

**Death penalty/Imminent execution**

**USA (Georgia)**

**Curtis Osborne (m), black, aged 38**

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Curtis Osborne is scheduled to be executed in Georgia at 7pm local time on 4 June. He was sentenced to death in August 1991 for two murders in August 1990. He has a clemency hearing at 9am on 30 May before the Georgia Board of Pardons and Paroles. He has been on death row for nearly 17 years.

The bodies of Linda Seaborne and Arthur Jones were found in the front of a car in Griffin, Georgia, on 7 August 1990. Both had been shot, apparently from the back seat of the vehicle. Curtis Osborne was arrested and subsequently told police that he had shot Jones, to whom he owed money, because Jones had threatened to beat him and was reaching for a weapon. On 14 August 1991, a jury convicted Osborne on two counts of murder, finding that Seaborne's murder was committed in the course of Jones's murder, an aggravating circumstance that made the crime eligible for the death penalty. The trial moved into the sentencing phase at which a number of witnesses, including Osborne's stepfather, sister, girlfriend, former employer and acquaintances testified to his good character and their experience of him as a hardworking and non-violent person. Curtis Osborne also testified on his own behalf: "There were certain circumstances that took place that night [of the crime], and sometimes things happen out of emotion and not just deliberation. Just things sometimes happen in certain ways. I want to say I'm sorry and I just ask you people to have mercy on me." On 15 August 1991, the jury recommended that Curtis Osborne be sentenced to death.

Among the issues raised on appeal has been the claim that Curtis Osborne was denied effective legal representation at the sentencing phase because the trial lawyer failed to present expert mental health evidence in mitigation. Osborne's federal appeal lawyer has presented evidence to the courts that Curtis Osborne suffered from major depressive disorder and post-traumatic stress disorder, and that the trial lawyer could have hired mental health experts to present such evidence to the jury in arguing for a sentence of less than death. The courts have rejected the claim of inadequate assistance of counsel.

At the 30 May clemency hearing, Curtis Osborne's lawyers will present the testimony of a psychiatrist, Dr George Woods, who has interviewed Osborne and family members and reviewed relevant medical records. He says that "none of this was done at the time of trial, except for a brief interview of Mr Osborne". Dr Woods states that medical health testimony would have been important at trial to help to explain a crime that was "so out of character with the previous person that Mr Osborne had been for many, many years." Dr Woods found that Osborne comes from a "family of significant physical abuse, emotional abuse as well," and that his childhood was "profoundly isolated and abusive." He has also concluded that Curtis Osborne's family has a "significant history of psychiatric disease" going back at least three generations, and that Osborne himself suffered from a major depressive disorder. From 1989, after losing his job, his mental health deteriorated and, according to Dr Woods, Osborne began to self-medicate with cocaine. Dr Woods suggests that the combination of Osborne's drug use and his mental health problems would have led to a "magnification of the paranoia, of the hyper-vigilance, of the hyper-reactivity, and of the misperception of reality," and "impaired his ability to conform his behaviour to the law". Such evidence, Dr Woods suggests, could have helped to explain to the jury the "tremendous change" in the defendant leading up to the crime.

Curtis Osborne's federal appeal lawyer has also claimed that the trial lawyer's failure to do an adequate investigation of his client by hiring expert witnesses was born of that white lawyer's racial animosity towards his African-American client. The appeal lawyer obtained a sworn affidavit from a white man, Gerald Huey, who had been in jail with Osborne before Osborne's trial and who shared the same trial lawyer, Johnny Mostiler. The affidavit states: "The first time I recall Mr Mostiler saying anything about Curtis Osborne's case was when

he said, 'the little nigger deserves the death penalty.' I was shocked because I knew that Mr Osborne had not gone to trial yet... That wasn't the only time Mr Mostiler said something like that though. I recall Mr Mostiler telling me that I wouldn't believe the amount of money he was going to spend on my case. He said he was going to hire a private investigator and get expert witnesses. He said the money he would spend on me was going to be a lot more than he would spend on Mr Osborne because 'that little nigger deserves the [electric] chair.' Mr Mostiler made similar comments to me both before and after Mr Osborne's trial."

Another lawyer has recalled a case from around 1992 in which another African-American client of Johnny Mostiler, Derek Middlbrooks, stated in open court that Mostiler had referred to him as "one dumb nigger" for not accepting the plea bargain offered by the state. Questioned by the court, Mostiler reportedly replied that he could "not recall" whether or not he had said this. Curtis Osborne's lawyer has recently obtained the transcript of proceedings in the Middlbrooks case, in which the defendant seeks a new lawyer because of Mostiler's alleged use of this racial epithet. According to the transcript, Middlbrooks says that Mostiler "indicated to me that he wouldn't, he couldn't go up there around those niggers because them niggers would kill me." Middlbrooks subsequently states: "I find it kind of hard, you know, kind of hard to have an attorney to represent me when he uses those types of words; it doesn't help my confidence in my attorney, you know." Questioned by the court, Johnny Mostiler responded that he could not remember if he had used this epithet, and also that he did not "use those terms out in public."

Since the USA resumed executions in 1977, 1,102 prisoners have been put to death, 41 of them in Georgia. There have been three executions in the USA this year, including one in Georgia on 6 May. On 22 May, the Georgia Board of Pardons and Paroles commuted the death sentence of Samuel David Crowe to life imprisonment without parole shortly before he was due to be executed. Although it gave no reason for its decision, the Board had heard testimony from various people, including a former prison officer, about Crowe's model behaviour and his remorse while on death row. In Curtis Osborne's case, the Board will hear statements from the prison chaplain about Osborne's constructive role on death row, and from Osborne's daughter as to the important role he continues to play in her life.

In late 2007, the UN General Assembly passed a landmark resolution calling for a worldwide moratorium on executions. Amnesty International opposes the death penalty in all cases, unconditionally (see *'The pointless and needless extinction of life': USA should now look beyond lethal injection issue to wider death penalty questions*, <http://www.amnesty.org/en/library/info/AMR51/031/2008/en>).

**RECOMMENDED ACTION: Please send appeals to arrive as quickly as possible, in English or your own language, in your own words:**

- expressing sympathy for any relatives of Linda Seaborne and Arthur Jones, explaining that you are not seeking to excuse the manner of their deaths or to downplay the suffering caused;
- opposing the execution of Curtis Osborne;
- expressing concern that the jury which sentenced him to death never heard expert mental health evidence, that could have helped to explain the defendant's conduct at the time of the crime;
- expressing concern at the allegations that Curtis Osborne's trial lawyer used racial epithets to describe his African-American client in this and at least one other case;
- welcoming the clemency granted to Samuel David Crowe;
- urging the Board of Pardons and Paroles to grant clemency to Curtis Osborne.

**APPEALS TO:**

State Board of Pardons and Paroles, 2 Martin Luther King, Jr. Drive, SE  
Suite 458, Balcony Level, East Tower, Atlanta, Georgia 30334-4909, USA

**Fax:** +1 404 651 8502

**Email:** [Webmaster@pap.state.ga.us](mailto:Webmaster@pap.state.ga.us).

**Salutation:** Dear Board members

**COPIES TO:** diplomatic representatives of the USA accredited to your country.

**PLEASE SEND APPEALS IMMEDIATELY.**